COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION
DIVISION OF INSURANCE

SUFFOLK, ss

Docket F 99-01

IN THE MATTER OF THE PROPOSED MERGER OF
ARKWRIGHT MUTUAL INSURANCE COMPANY AND
PROTECTION MUTUAL INSURANCE COMPANY WITH
AND INTO ALLENDALE MUTUAL INSURANCE COMPANY

MEMORANDUM OF DECISION AND ORDER

I. INTRODUCTION

Arkwright Mutual Insurance Company, a Massachusetts domiciled mutual property/casualty insurance company ("Arkwright"), and Protection Mutual Insurance Company, an Illinois domiciled mutual property/casualty insurance company ("Protection"), seek to merge with and into Allendale Mutual Insurance Company, a Rhode Island domiciled mutual property/casualty insurance company ("Allendale") (collectively, the "Companies").[1]

[1] The principal executive offices of each of the Companies are as follows: Arkwright is located at 225 Wyman Street, Waltham, Massachusetts; Protection is located at 300 S. Northwest Highway, Park Ridge, Illinois; and Allendale is located at 1301 Atwood Avenue, Johnston, Rhode Island.

By the terms of the Companies' Agreement and Plan of Merger, dated as of October 16, 1998 (the "Agreement and Plan of Merger") (Docket Item No. 4A),[2] as amended by the First Amendment to Agreement and Plan of Merger dated as of April 30, 1999 (the "Amendment") (Docket Item No. 3) (collectively, the "Merger Agreement"), (i) Arkwright and Protection are to merge with and into Allendale, (ii) Allendale is to be the surviving company (the "Surviving Company") and (iii) Allendale is to continue its corporate existence under the name Factory Mutual Insurance Company and remain domiciled in, and subject to the laws of, the State of Rhode Island, with its principal offices in Johnston, Rhode Island.

Pursuant to Massachusetts General Laws ("M.G.L.") chapter 175, §19B ("Section 19B"), the proposed merger (the "Merger") and the Merger Agreement must be approved by the Commissioner of Insurance for the Commonwealth of Massachusetts (the "Commissioner"), who has broad discretion in granting such approval. M.G.L. c. 175, § 19B.[3] Arkwright has applied for and seeks such approval.

The Commissioner's review of the Merger and Merger Agreement under Section 19B is governed by 211 Code of Massachusetts Regulations ("CMR") § 140.00, et seq. (the "Merger Regulation"), pursuant to which the Commissioner may consider the following factors in deciding whether to approve the Merger:

1. the fairness of the terms and conditions of the Merger Agreement;

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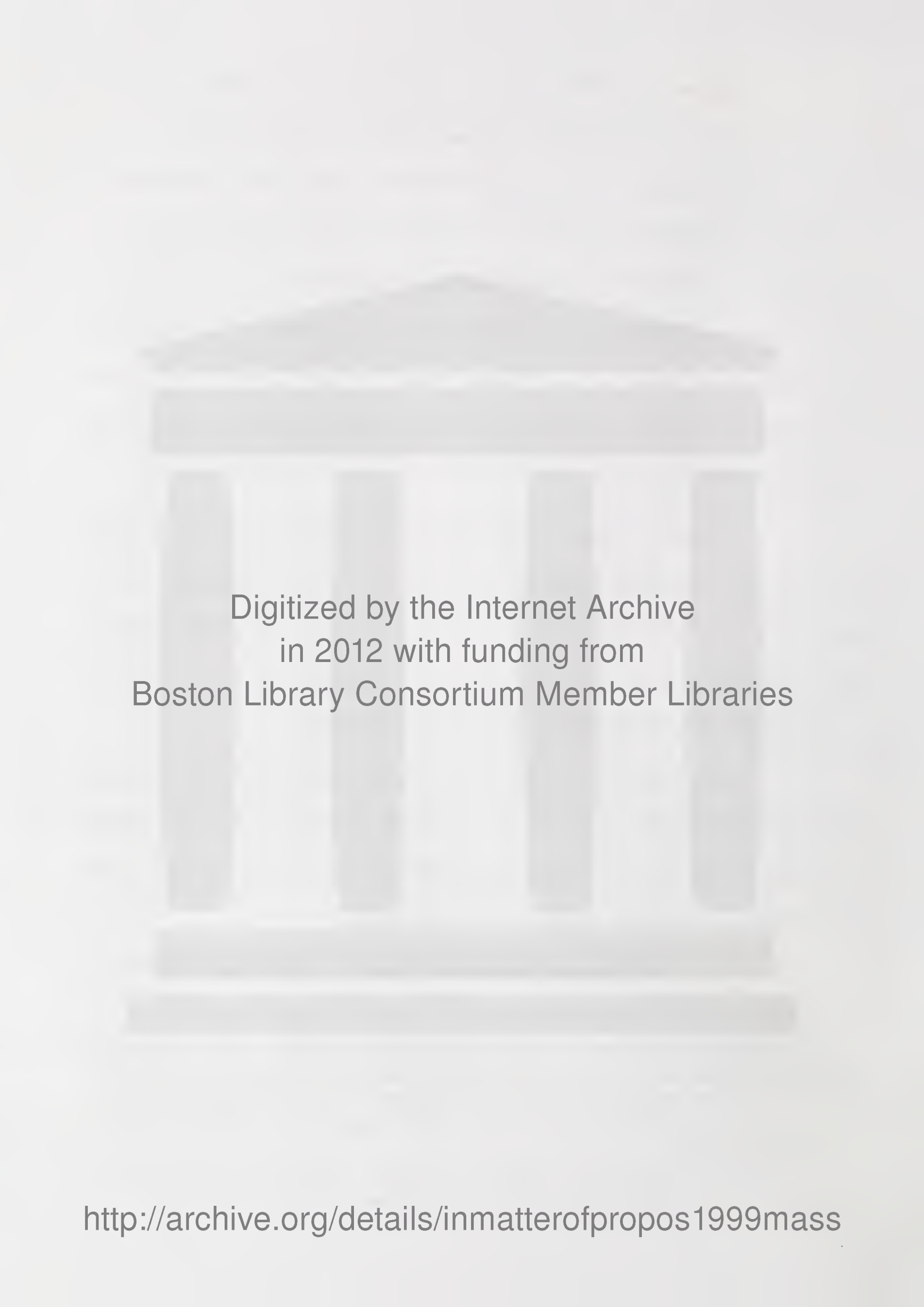
[2] Reference is made to the public docket, bearing Docket No. F99-01, which was established on May 4, 1999 and has been kept by the Division in accordance with 211 CMR §140.12(3) (hereinafter, the "Docket"). References to the Docket are not intended to be an exhaustive source of material in support of the points stated in this Memorandum of Decision and Order.

[3] Section 19B applies to a merger by a domestic insurer with and into a foreign insurer, where the foreign insurer is the surviving company. M.G.L. c. 175, § 19B.



2. whether the interests of Arkwright policyholders are protected; and

3. whether the Merger is in the public interest.

The Merger Regulation also provides that the Commissioner, or a presiding officer appointed by the Commissioner (the "Presiding Officer"), may elect to conduct a public hearing "in order to afford interested persons an opportunity to present data, views, arguments, or comments in regard to the proposed merger . . . including, but not limited to, the [Merger] Agreement," 211 CMR § 140.08 (the "Public Hearing"). Such Public Hearing was held on June 10, 1999.

Section 19B also requires that the Merger Agreement be approved by a vote of the majority of the board of directors of the domestic company as well as by the vote of at least two-thirds of such of the policyholders of the domestic company as are present and voting, in person or by proxy, at a special meeting called for that purpose (the "Special Meeting"). M.G.L. c. 175, § 19B; 211 CMR §§ 140.07 and 140.13. Both Arkwright's board of directors and its policyholders have, in fact, so approved the Merger Agreement. The Commissioner may approve the Merger Agreement if "subsequent to the Special Meeting, it appears that the requirements of M.G.L. c. 175, ... § 19B, 211 CMR 140.00 and other applicable laws, if any, have been satisfied," 211 CMR § 140.14.

In addition, before the Merger can take effect, Rhode Island law requires the approval of the Allendale Board of Directors, the Rhode Island Director of Insurance, and Allendale's policyholders. `Similarly, Illinois law requires the approval of the Protection Board of Directors, Protection's policyholders, and the Illinois Insurance

Department.[4] (Arkwright Mutual Insurance Company Proxy Statement (the "Proxy Statement"), Docket Item No. 4A, at 37.) On February 3, 1999, the Acting Rhode Island Director of Insurance approved the Merger, subject to certain conditions and to the Amended and Restated Allendale Charter and, on February 5, 1999, the Illinois Department of Insurance indicated that it should be in a position to recommend approval of the Merger to its Director.[5] A number of other jurisdictions have laws that may affect the Merger or the operations of the Surviving Company. The approval of those jurisdictions, where required, is also a condition precedent to the consummation of the Merger, and the Companies have agreed to use their respective best efforts to file any required notices or otherwise take such actions as are necessary to obtain any required approvals or to comply with applicable requirements in connection with the Merger under such laws. (Proxy Statement, Docket Item No. 4A, at 37-38.) Among other things, under the federal Hart-Scott-Rodino Antitrust Improvements Act (the "Hart-Scott-Rodino Act") and the rules promulgated thereunder by the Federal Trade Commission, certain merger transactions may not be completed until notifications have been given, certain information furnished to the Federal Trade Commission and to the Antitrust Division of

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[4] Illinois law apparently does not require a public hearing in connection with the Commissioner's review of a merger application, and none has been held or noticed in this matter. See 215 Ill. Comp. Stat. 5/162. In addition, based on the facts described in the Form A Statement filed by the law firm of Hinckley, Allen & Snyder on behalf of the Companies in accordance with Rhode Island General Laws § 27-35-1 et seq. and Rhode Island Insurance Regulation XVII, the Acting Rhode Island Director of Insurance determined that a public hearing was not warranted. (Order of the State of Rhode Island and Providence Plantations, Department of Business Regulation, dated February 3, 1999, and received by the "Working Group" as defined herein.)

[5] See letter from Jack Messmore, Deputy Director, State of Illinois Department of Insurance, to James. M. Oskandy, Vice President of Corporate Affairs and Secretary, Protection, dated February 5, 1999, and received by the "Working Group" as defined herein.

the Department of Justice and certain specified waiting periods have lapsed. On August 8, 1998, the Companies filed an application and report forms requesting clearance for the merger under the Hart-Scott-Rodino Act with the Federal Trade Commission and the Antitrust Division of the Department of Justice. On September 6, 1998, the applicable waiting period expired. (Proxy Statement, Docket Item No. 4A, at 38.) In addition, the Merger is also subject to approval under the Canadian Competition Act. On November 3, 1998, the Companies received clearance under this act from the Canadian Competition Bureau. (Proxy Statement, Docket Item No. 4A, at 38.)

II. PROCEDURAL BACKGROUND

On October 21, 1998, Arkwright submitted to the Division of Insurance of the Commonwealth of Massachusetts (the "Division") a duly executed and attested copy of the Agreement and Plan of Merger, which had been unanimously approved by the Companies' respective Boards of Directors (Proxy Statement, Docket Item No. 4A, at10),, and sought the Commissioner's approval of the Merger and the Merger Agreement.[6]

In connection with Arkwright's application, the Commissioner thereafter designated an interdepartmental working group (the "Working Group") to conduct an examination of

[6] Thereafter, on May 3, 1999, Arkwright submitted a duly executed and attested copy of the Amendment, which also had been unanimously approved by the Companies' respective Boards of Directors. (Proxy Statement, Docket Item No. 4A, at 36.)

Arkwright under M.G.L. chapter 175, § 4 ("Section 4") and 211 CMR § 140.06, including a review of the Merger Agreement (the "Examination"), and to advise the Commissioner with respect thereto. As it was authorized to do, and by agreement of the Companies, the Division thereafter engaged the services of various outside and independent legal, actuarial/accounting and financial advisors (the "Working Group Advisors") to assist in the conduct of the Examination, including the following: Dewey Ballantine LLP, as legal advisors ("Dewey Ballantine"); Arthur Andersen LLP, as actuarial/accounting advisors ("Arthur Andersen"); and Sandler O'Neill & Partners, L.P., as financial advisors ("Sandler O'Neill"). In accordance with its mandate, the Working Group commenced its Examination of Arkwright on November 23, 1998. (Letter from Robert G. Dynan to William J. Poutsiaka, dated November 23, 1998, Docket Item No. 4A.), M.G.L. c. 175, § 4; 211 CMR §§ 140.03 and 140.06.

In accordance with the Merger Regulation, the Commissioner elected to hold a Public Hearing and, by her authority under section 7 of M.G.L. chapter 26,, designated the undersigned as the Presiding Officer of the Public Hearing. M.G.L. c. 26, § 7; 211 CMR § 140.03. On May 3, 1999, pursuant to section 140.09(1)-(2) of the Merger Regulation, I issued a written notice of Public Hearing (the "Notice of Public Hearing") to Arkwright and directed that it be distributed to Arkwright's directors, officers, employees and policyholders, to Protection and to Allendale, no later than 30 days prior to the Public Hearing. (Notice of Public Hearing, Docket Item No. 4A.)

On May 7, 1999, Arkwright sent, via first-class mail, the Notice of Public Hearing, the Proxy Statement, the Notice of Special Meeting and certain explanatory

materials (the "Policyholder Mailings") to the "Arkwright Voting Policyholders,"[7] as required by M.G.L. c. 175 § 19B and 211 CMR 140.09. In addition, that same day, Arkwright also sent, via first class mail, the Notice of Public Hearing to all members of its board of directors, as well as to Allendale and Protection, and, at the request of the Division, notified all employees and officers of Arkwright of the Public Hearing by posting the Notice of Public Hearing on Arkwright's website and employee bulletin boards. (Affidavit of Compliance with Statutory and Regulatory Requirements, sworn to by Robert J.M. O'Hare, Jr. on June 10, 1999 (the "Affidavit of Compliance"), Docket Item No. 13A.)

Under the Merger Regulation, the Notice of Public Hearing must be published in a newspaper, as approved by the Commissioner, at least 30 days prior to the Public Hearing. 211 CMR § 140-09(5). Similarly, the Notice of Special Meeting must be provided in accordance with the applicable laws and published at least once a week for three successive weeks in some newspaper printed in the Commonwealth of Massachusetts (the "Commonwealth"). Since Allendale and Protection are domiciled outside of the Commonwealth, the Notice of Special Meeting must also be published at least once a week for three successive weeks in a newspaper printed in the towns where Allendale and Protection have their principal offices. M.G.L. c. 175, § 19B; 211 CMR §

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[7] For purposes of this Memorandum and Decision of Order, "Arkwright Voting Policyholders" refers to holders of policies of insurance which provide for membership in Arkwright, each as reflected on the corporate records of Arkwright as of April 16, 1999. In accordance with M.G.L. c. 175 §19B and §76, the Merger Agreement must be approved by the vote of at least two-thirds of such of Arkwright's policyholders as are present and voting (in person or by proxy) at the Special Meeting, and each Arkwright Voting Policyholder is entitled to one vote at the Special Meeting for each policy held by such person, up to a maximum of 20 votes per person. (Proxy Statement, Docket Item No. 4A, at 8.)

140.13(2). As approved by the Commissioner, Arkwright arranged for publication in certain national and regional newspapers of the Notice of Public Hearing on May 7, 1999, and of the Notice of Special Meeting on May 13, 21 and 27, 1999, respectively.[8] (Affidavit of Compliance at 1-2.)

On May 3, 1999, pursuant to 211 CMR § 140.10, Arkwright requested the opportunity to testify at the Public Hearing regarding the Merger and submitted a pre-hearing filing in support of the Merger Agreement, which included, among other things, the written statements and related supporting documents to be offered by Arkwright at the Public Hearing. (Domestic Company Pre-Hearing Filing Summary, Docket Item No. 4A.)

The Public Hearing was held on June 10, 1999. The Public Hearing was officially recorded by a court reporter approved by me, the record was transcribed and copies of the transcript of the Public Hearing have been provided to the Division.[9] During the Public Hearing, Arkwright presented oral statements, under oath, of seven witnesses in support of the Merger Agreement. These included:

- Robert J. M. O'Hare, Jr. At the time of the Public Hearing, Mr. O'Hare was Vice President, Secretary and General Counsel of Arkwright; he has since assumed the role of President and Chief Executive Officer, effective on June 15, 1999 (Tr. at 14);

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[8] The newspapers were *the Wall Street* Journal, The *Boston Globe*, *The Providence Journal*, and *The Chicago Tribune*. (Certificate of Mailing submitted by Arkwright Mutual Insurance Company, Docket Item No. 13A.) Arkwright authorized Robert J. M. O'Hare, Jr., then its Senior Vice President, Secretary and General Counsel, to answer any inquiries related to, and to provide assistance in connection with, the Merger to the Arkwright Voting Policyholders who received the Policyholder Mailings. (Notice of Special Meeting of Policyholders dated May 5, 1999, from John A. Luke, Jr. to Arkwright Voting Policyholders, Proxy Statement, Docket Item No. 4A.)

[9] References contained herein to the official record of the Public Hearing are in the following form: "Tr. at __."

- Jeffrey A. Burchill, Vice President of Finance and Director of International Operations of Protection (Tr. at 39);
- William J. Poutsiaka. At the time of the Public Hearing, Mr. Poutsiaka was President and Chief Executive Officer of Arkwright; he had at the time tendered his resignation from Arkwright, effective on June 15, 1999 (Tr. at 51);
- Jonathan C. Wright, Senior Vice President and Chief Financial Officer of Arkwright (Tr. at 74);
- Shivan S. Subramaniam, President and Chief Executive Officer of Allendale (Tr. at 89);
- Celeste Guth, Managing Director of Goldman, Sachs & Co. ("Goldman Sachs") (Tr. at 100); and
- Jan Lommele, Principal of Deloitte & Touche LLP ("Deloitte & Touche") (Tr. at. 110).

The Notice of Public Hearing also invited policyholders and interested persons to make oral statements at the Public Hearing and to submit written statements for inclusion in the Docket and for the Commissioner's consideration, in accordance with 211 CMR §§ 140.09 (1) - (2). (Notice of Public Hearing, Docket Item No. 4A.) No policyholder or any other interested persons submitted a written statement into the Docket, however, nor did any policyholder or any other interested persons (except as set forth herein) make any oral statement at the Public Hearing. (Tr. at 119, 158.)

At the Public Hearing, several representatives of the Working Group and the Working Group Advisors made oral statements under oath and, in addition, the Working Group formally presented its report with respect to the Examination. (Tr. at 137; Report of the Working Group dated June 10, 1999 (the "Working Group Report"), Docket Item No. 13A.) At the conclusion of the Public Hearing, the Commissioner directed that the Docket remain open until 9:00 a.m. on Friday, June 18, 1999 for

purposes of receiving the results of the vote to be taken at the Arkwright Special Meeting. (Tr. at 158.)

Thereafter, on June 15, 1999, a Special Meeting was held by Arkwright for purposes of allowing Arkwright's Voting Policyholders to vote on the Merger Agreement. (Certificate of Robert O'Hare dated June 15, 1999, Docket Item No. 9A.) As required by section 140.13 of the Merger Regulation, over two-thirds of the Arkwright Voting Policyholders who were present and voted (either in person or by proxy) cast votes in favor of the Merger and approving the Merger Agreement. (Post-Hearing Memorandum of Arkwright Mutual Insurance Company, dated June 17, 1999 ("Post-Hearing Memorandum"), Docket Item No. 11, at 12. See Certificate of Robert O'Hare dated June 15, 1999, Docket Item No. 9A.)[10]

III. DISCUSSION

A. BACKGROUND AND PURPOSE OF THE MERGER

Arkwright, Allendale and their various predecessor entities, together with Protection, are the joint owners of a group of entities, which have for decades been a part of the Factory Mutual System. (Proxy Statement, Docket Item No. 4A, at 9; Statement of Robert J.M. O'Hare, Jr., dated April 29, 1999 ("O'Hare St."), Docket Item No. 4A, at 6.)

[10] Special policyholder meetings were also held by Allendale on June 3, 1999 and by Protection on June 2, 1999. Both resulted in the approval of the Merger Agreement by the votes of at least two-thirds of the policyholders of each of those Companies as were present and voting (either in person or by proxy) at those meetings. (Certificate of Secretary of Protection Mutual Insurance Company, dated June 14, 1999 and Certificate of Secretary of Allendale Mutual Insurance Company, dated June 15, 1999, Docket Item Nos. 13B and 13C; Post-Hearing Memorandum Docket Item No. 11, at 12.)

The Factory Mutual System includes a series of contractual and joint ownership relationships that enable the Companies to pool their resources, expertise and risks in the writing of property insurance covering commercial, industrial and institutional risks. (Proxy Statement, Docket Item No. 4A, at 9; O'Hare St. at 6; Tr. at 20-21.) The operation of the Factory Mutual System joint ventures necessarily requires substantial cooperation among, and integration of, the resources of the Companies, including the exchange of certain proprietary information about the business operations of each of the Companies. (Proxy Statement, Docket Item No. 4A, at 9; O'Hare St. at 6.)

In view of this cooperation, the Companies have from time to time explored the possibility of a merger as a means of improving the efficiency and effectiveness of the Factory Mutual System. Intensifying competition and falling premiums in the property and casualty insurance market, coupled with high overhead costs, operational inefficiencies and the need for greater financial strength, led the Companies to believe that a merger had become a strategic necessity. (O'Hare St. at 6; Tr. at 52-53.) Arkwright's management believes that the Merger will benefit Arkwright's policyholders by, among other reasons, allowing them to become policyholders of a financially stronger and operationally more efficient mutual insurance company, providing them with enhanced access to the benefits of the Factory Mutual System and creating the possibility of reduced premiums if the anticipated financial savings resulting from a reduction in overall operating costs are realized and passed through to the policyholders of the Surviving Company. (Statement of William J. Poutsiaka, dated April 29, 1999 ("Poutsiaka St."), Docket Item No. 4A, at 12; Tr. at 64.)

At its meetings beginning in 1997, the Arkwright Board considered, among other things, the advisability of pursuing a strategic merger with Allendale and Protection. During November 1997, various communications were exchanged between the Companies concerning a possible merger, a possibility that had previously been raised from time to time. In early 1998, the Companies appointed a committee comprising two members of each of the Companies' boards of directors (the "Joint Committee") to consider a merger of the Companies. (Proxy Statement, Docket Item No. 4A, at 9; Tr. at 21; Post-Hearing Memorandum, Docket Item No. 11, at 10.) Discussions among the managements of each of the Companies and members of the Joint Committee culminated in the execution of a non-binding memorandum of intent among the Companies dated June 12, 1998. On July 29, 1998, the Companies executed an amended and restated memorandum of intent setting forth their mutual intent to effect a merger of equals, describing the proposed merger transaction, stating in general terms the composition of the board of directors of the Surviving Company immediately following the proposed merger, and containing a Statement of Principles for the Return of Merger Benefits (the "Principles") to the policyholders of the Surviving Company in the form of premium offsets. (Proxy Statement, Docket Item No. 4A, at 9-10; O'Hare St. at 7; Tr. at 22; Post-Hearing Memorandum, Docket Item No. 11, at 10-11.) On July 30, 1998, the Companies issued a joint press release announcing their intent to merge subject to the required regulatory and policyholder approvals being granted, and subject also to the execution of a definitive merger agreement. (Proxy Statement, Docket Item No. 4A, at 9-10; O'Hare St. at 7.)

After the execution of the memorandum of intent, each of the Companies promptly undertook a legal, financial and actuarial due diligence review of each of the other companies. As part of their financial due diligence review, the Companies engaged Goldman Sachs in May 1998 to act as their financial advisor in connection with the Merger. In addition, the Companies retained Deloitte & Touche in June 1998 to perform an actuarial review of the reported loss and loss adjustment expense reserves of each of the Companies. (O'Hare St. at 7-8; Tr. at 22-24; Post-Hearing Memorandum, Docket Item No. 11, at 11.) The results of these financial and actuarial reviews were presented to the boards of directors of each of the Companies prior to their final consideration of the Agreement and Plan of Merger. (O'Hare St. at 7-8; Tr. at 22-24.)

On October 14, 1998, the Arkwright board of directors met to consider the results of the due diligence review, and the Agreement and Plan of Merger and the transactions contemplated thereby. (Proxy Statement, Docket Item No. 4A, at 10; O'Hare St. at 8; Tr. at 24.) Based upon their own deliberations and the opinions of Goldman, Sachs[11] and Deloitte & Touche (Proxy Statement, Docket Item No. 4A, at 11; O'Hare St. at 8-9; Tr. at 24-25),[12] the Arkwright board of directors unanimously approved the Agreement and Plan of Merger and the transactions contemplated thereby. (Proxy

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[11] By letter dated October 16, 1998, Arkwright obtained a formal opinion from Goldman Sachs that, as of the date of the Agreement and Plan of Merger, the exchange of membership interests in Arkwright for membership interests in the Surviving Company on the part of the policyholders of Arkwright pursuant to the Agreement and Plan of Merger would be fair, from a financial point of view, to such policyholders taken as a group. (Docket Item No. 4A; Post-Hearing Memorandum, Docket Item No. 11, at 17.) Goldman Sachs subsequently delivered to Arkwright an updated written opinion, dated May 5, 1999. (Docket Item No. 5; Proxy Statement, Docket Item No. 4A, at 11.)

[12] Deloitte & Touche reported that Arkwright and Allendale's held reserves were within the range of reasonable estimates of the outstanding loss and loss adjustment expense liabilities of Arkwright and Allendale, respectively, as of December 31, 1997,

Statement, Docket Item No. 4A, at 10; O'Hare St. at 9; Tr. at 25; Post-Hearing Memorandum, Docket Item No. 11, at 12.) The Allendale and Protection boards of directors each unanimously approved the Agreement and Plan of Merger and the transactions contemplated thereby on October 14 and October 16, 1998, respectively. (Proxy Statement, Docket Item No. 4A, at 10; O'Hare St. at 9; Tr. at 25-26; Post-Hearing Memorandum, Docket Item No. 11, at 12.) The Agreement and Plan of Merger was executed and delivered by each of the Companies as of October 16, 1998 (Proxy Statement, Docket Item No. 4A, at 10; O'Hare St. at 9; Tr. at 25-26), and the Amendment

and further reported that Protection's held reserves were $3.7 million below the low end of the range of reasonable estimates of the outstanding loss and loss adjustment expense liabilities of Protection as of December 31, 1997. (Proxy Statement, Docket Item No. 4A, at 12-13; Post-Hearing Memorandum, Docket Item No. 11, at 18.) Protection believes that its reserves are adequate. (Proxy Statement, Docket Item No. 4A, at 12-13.)

was executed and delivered by each of the Companies as of April 30, 1999. (Proxy Statement, Docket Item No. 4A, at 10.) An executed copy of the Amendment was filed with the Division on May 3, 1999. (Tr. at 26.)

On February 3, 1999, the Acting Director of the Rhode Island Department of Business Regulation issued an order authorizing the Merger subject to certain conditions, and approved the Amended and Restated Charter of Allendale.[13] (Post-Hearing Memorandum, Docket Item No. 11, at 13.) Similarly, pursuant to informal discussions between representatives of Allendale, Protection and the Illinois Department of Insurance, none of the Companies have been advised by the Illinois Department of Insurance of any significant concerns pertaining to the Merger. (O'Hare St. at 10; Tr. at 27.) Under Illinois law, however, the formal application for approval of the Merger by the Illinois Department of Insurance will not be filed until the Merger has been approved by the Policyholders of Protection. (O'Hare St. at 10.) The policyholders of Protection voted to approve the Merger Agreement at a special policyholder meeting held on June 2, 1999, and called for such purpose. (Certificate of Secretary of Protection Mutual

[13] The conditions are as follows: (a) the Surviving Company is required to provide the Director of the Rhode Island Department of Business Regulation with at least thirty days prior written notice before making any distribution of merger benefits to policyholders; (b) the Surviving Company is required to obtain the prior written approval of the Director before reporting the unpaid balance of any note, certificate, or debenture as surplus in any statutory financial statement; (c) the order may be rescinded by the Director based upon any material change in the facts or in any document submitted to the Director in connection with the proposed merger; (d) the Surviving Company shall maintain its corporate and administrative offices and all records within the State of Rhode Island as long as it remains a Rhode Island domiciled insurer; and (e) the Director may rescind the order based upon a review of any relevant information and/or document obtained prior to consummation of the proposed merger. (Order of the State of Rhode Island and Providence Plantations, Department of Business Regulation, dated February 3, 1999, and received by the Working Group.)

Insurance Company, dated June 14, 1999, Docket Item No. 13; Tr. at 27-28; Post-Hearing Memorandum, Docket Item No. 11, at 12.)

At a Special Meeting held on June 15, 1999, the policyholders of Arkwright approved the Merger Agreement by a vote in excess of the required two-thirds of the votes cast by the policyholders of Arkwright voting in person or by properly executed proxy. (Certificate of Robert O'Hare dated June 15, 1999, Docket Item. No. 9A; Post-Hearing Memorandum, Docket Item No. 11, at 12.)

B. STRUCTURE OF THE MERGER

The Merger Agreement provides that Arkwright and Protection will merge with and into Allendale. Upon the consummation of the Merger, the separate existence of Arkwright and Protection will cease and Allendale will be the Surviving Company continuing its corporate existence under the name Factory Mutual Insurance Company. (Proxy Statement, Docket Item No. 4A, at 9; O'Hare St. at 11; Tr. at 31-32; Agreement and Plan of Merger, Docket Item No. 3, § 2.1, at 12.) The policyholders of Arkwright and Protection will become policyholders of the Surviving Company and will be entitled to rights and privileges in the Surviving Company in accordance with the Rhode Island Business Corporations Act, the Amended and Restated Charter and the by-laws of the Surviving Company (Proxy Statement, Docket Item No. 4A, at 9, 17; O'Hare St. at 11; Tr. at 31-32; Post-Hearing Memorandum, Docket Item No. 11, at 13-14), and the terms of their respective policies. (O'Hare St. at 11; Tr. at 32.)

The Surviving Company will be domiciled in the State of Rhode Island and will retain the headquarters of Allendale in the town of Johnston, Rhode Island, as its home office. (Proxy Statement, Docket Item No. 4A, at 19; O'Hare St. at 12; Tr. at 32.) The initial board of directors of the Surviving Company (the "Surviving Company

Board") will consist of twenty members, six of whom have been designated by Arkwright, six of whom have been designated by Allendale and six of whom have been designated by Protection, and all of the members so designated will be representatives of policyholders of the Surviving Company. (Proxy Statement, Docket Item No. 4A, at 17; O'Hare St. at 12; Tr. at 32; Post-Hearing Memorandum, Docket Item No. 11, at 14.) The remaining two members of the Surviving Company Board will be Shivan S. Subramaniam, the current President, Chairman of the Board of Directors and Chief Executive Officer of Allendale, who will serve on the Surviving Company Board and as President and Chief Executive Officer of the Surviving Company, and James W. Black, the current President and Chief Executive Officer of Protection, who will serve as Vice Chairman of the Surviving Company Board and as Chief Operating Officer of the Surviving Company. The Chairman of the Surviving Company Board will be John A. Luke, Jr., a current Director of Arkwright (Proxy Statement, Docket Item No. 4A, at 17; O'Hare St. at 12), who is one of the six members of the Surviving Company Board to be so designated by Arkwright. (Proxy Statement, Docket Item No. 4A, at 17; O'Hare St. at 12. See Tr. at 94.)

The Companies have agreed that the Surviving Company will continue to market a selected combination of insurance and financial products and services currently offered by the Factory Mutual System. (O'Hare St. at 12; Tr. at 32-33; Post-Hearing Memorandum, Docket Item No. 11, at 14.) All insurance policies issued by the Companies and their subsidiaries or affiliates in-force at the effective time of the Merger will continue in force in accordance with their terms and conditions, and will continue to be serviced by the Surviving Company subsequent to the Merger. (O'Hare St. at 12; Tr.

at 32-33; Post-Hearing Memorandum, Docket Item No. 11, at 14.) Certain entities that are now subsidiaries of each of the Companies will become, at the effective time of the Merger, subsidiaries of the Surviving Company. In addition, each of the jointly owned entities of the Factory Mutual System will become a part of, or a subsidiary of, the Surviving Company. (O'Hare St. at 12; Tr. at 32-33.)

C. INTERESTS OF POLICYHOLDERS

1. Policyholder Rights

Although the management of Arkwright believes that the Merger will not have a material adverse effect on the rights of the Arkwright policyholders, certain legal rights of Arkwright policyholders will change as a result of the Merger. (Proxy Statement, Docket Item No. 4A, at 14.) The rights of Arkwright policyholders are presently governed substantially by Massachusetts law and by Arkwright's Charter and by-laws. (Proxy Statement, Docket Item No. 4A, at 14.) Upon consummation of the Merger, Arkwright policyholders will become policyholders in the Surviving Company and their rights (other than rights associated with their insurance coverage, which will remain unchanged) will be governed substantially by Rhode Island law and by the Surviving Company's Charter and by-laws. (Proxy Statement, Docket Item No. 4A, at 14.)

(a) Contract Rights

The terms and provisions of the policies held by Arkwright policyholders will not change, and policy coverages and rights described in Arkwright policies will not be reduced or altered in any manner as a result of the Merger. (Proxy Statement, Docket

Item No. 4A, at 20.) The premiums required to be paid as specified in these policies will not increase or otherwise change solely because of the Merger, and the Surviving Company will become fully obligated under the policies to the same extent as Arkwright is presently obligated. (Proxy Statement, Docket Item No. 4A, at 20.)

(b) Voting Rights

The voting rights of Arkwright policyholders will change as a result of the Merger. (Proxy Statement, Docket Item No. 4A, at 14, 20.) Currently, the Arkwright Charter and Massachusetts law provide that each policyholder is entitled to one vote for each policy held subject to a maximum of 20 votes per person. Moreover, Massachusetts law generally provides that policyholder action requires an affirmative vote of a majority of policyholders present and voting at a meeting. (Proxy Statement, Docket Item No. 4A, at 14, 20.) In order to approve a merger or consolidation, Massachusetts law also requires an affirmative vote of two-thirds of policyholders present and voting at a special meeting called for that purpose. (Proxy Statement, Docket Item No. 4A, at 14, 20.) The Arkwright by-laws, as required by Massachusetts law, provide that a special meeting of policyholders may be called upon the written application of at least one-half of one percent of the policyholders. (Proxy Statement, Docket Item No. 4A, at 20.)

Upon consummation of the Merger, however, the voting rights of policyholders of the Surviving Company will be governed by the Charter and by-laws of the Surviving Company and by the Rhode Island Business Corporations Act. (Proxy Statement, Docket Item No. 4A, at 14, 20.) The Charter of the Surviving Company provides that each policyholder of the Surviving Company will be entitled to one vote per member, in person or by properly executed proxy, on all matters presented for a member vote; provided that where there is more than one insured under any policy, such insureds

will be deemed to be a single policyholder for all purposes including voting rights. (Proxy Statement, Docket Item No. 4A, at 14, 20.) Rhode Island law provides that, unless otherwise provided for in the charter, the required vote for action by policyholders is an affirmative vote of the majority of policyholders represented at a meeting and entitled to vote on the subject matter. (Proxy Statement, Docket Item No. 4A, at 14, 20.) The Charter of the Surviving Company provides that the required vote to approve a merger or consolidation of the Surviving Company is an affirmative vote of two-thirds of policyholders represented at a meeting. (Proxy Statement, Docket Item No. 4A, at 14, 20.) The by-laws of the Surviving Company, as permitted by Rhode Island law, do not allow a special meeting of policyholders to be called by policyholders. (Proxy Statement, Docket Item No. 4A, at 20.)

(c) Dissolution Rights

The dissolution rights of Arkwright policyholders will change as a result of the Merger. (Proxy Statement, Docket Item No. 4A, at 20.) Under Massachusetts law, policy claims for unpaid losses have priority over claims for returned premiums on cancelled or unexpired policies in a liquidation. Policyholders, as members, share in any assets left after payment of all liabilities. (Proxy Statement, Docket Item No. 4A, at 20.) The Charter of the Surviving Company is silent as to the rights of policyholders in the event of a liquidation of the Surviving Company, and accordingly rights upon liquidation would be determined by Rhode Island law. Under Rhode Island law, policy claims for unpaid losses have priority over the claims of most creditors in a liquidation. After the payment in full of all creditors, policyholders, as members, share in a fair and equitable allocation of any remaining assets. (Proxy Statement, Docket Item No. 4A, at 20.)

(d) Demutualization

With respect to a demutualization or a mutual holding company reorganization of the Surviving Company, the rights of Arkwright policyholders will change as a result of the Merger, subject to the exercise of continuing jurisdiction by the Massachusetts Commissioner as described below.

Massachusetts law does not permit Arkwright to convert directly into a publicly-held stock corporation through a process known as demutualization. (Proxy Statement, Docket Item No. 4A, at 14, 21.) Under Rhode Island law, however, the Surviving Company could convert directly into a publicly-held stock corporation through a demutualization using a procedure pursuant to which it would conduct a subscription rights offering of common stock to its policyholders and to outside investors. (Proxy Statement, Docket Item No. 4A, at 14, 21.) Accordingly, the rights of Arkwright policyholders would be different following the Merger because Rhode Island law permits a direct demutualization of the Surviving Company, which is not permitted under Massachusetts law. (Proxy Statement, Docket Item No. 4A, at 21.)

However, another method to convert from a mutual company to stock form, known as a mutual holding company reorganization, is provided for under both Massachusetts and Rhode Island law, subject to certain differences in the procedures required to facilitate such a reorganization. (Proxy Statement, Docket Item No. 4A, at 14-15, 21.) Pursuant to such a reorganization, the rights of policyholders as members are transferred to a newly-formed mutual holding company that must own at least a majority interest in the converted stock insurer at all times. (Proxy Statement, Docket Item No. 4A, at 21.) Before such a reorganization may be initiated, Massachusetts law requires the affirmative vote of three-quarters of the directors and two-thirds of the policyholders of

the mutual insurer voting at a meeting, and requires the Massachusetts Commissioner to hold a public hearing to assess the merits of the proposed mutual holding company reorganization. Rhode Island law, however, requires the affirmative vote of two-thirds of the directors and a majority of the policyholders voting at a meeting, and does not require a public hearing. Accordingly, the rights of Arkwright policyholders in a mutual holding company reorganization will change as a result of the Merger.[14] (Proxy Statement, Docket Item No. 4A, at 14-15, 21.)

Allendale, on behalf of itself and as the Surviving Company, has agreed that, for a period of three years following the consummation of the Merger the Commissioner shall retain jurisdiction with respect to any demutualization of the Surviving Company. (Letter from Shivan S. Subramaniam to Linda Ruthardt, dated April 29, 1999 (the "Commitment Letter"), Docket Item No. 13A and Annex F to the Proxy Statement, Docket Item No. 4A; Tr. at 143; Post-Hearing Memorandum, Docket Item No. 11, at 19.) This jurisdiction shall operate concurrently with the jurisdiction exercised by the Department of Business Regulation of the State of Rhode Island. (Tr. at 145-46.) Within this three year period, the Surviving Company will not convert to a stock insurance company pursuant to applicable law without demonstrating to the Commissioner that the Surviving Company's demutualization will be implemented in a manner consistent with the terms of Section 7.15 of the Merger Agreement. (Commitment Letter, Docket Item No. 13A, and Annex F-1 to the Proxy Statement, Docket Item No. 4A. See Working Group Report, Docket Item No. 13A, at 4; Tr. at

[14] Massachusetts law permits a domestic mutual holding company to convert to a domestic publicly-held stock corporation pursuant to a plan of conversion which complies with M.G.L. c. 175, § 19U(b).

143.) The terms of Section 7.15 state that any demutualization will be designed and implemented so as to treat each member of the Surviving Company at the time of the demutualization fairly and equitably, with no preference given to any member on the basis of such member's prior membership in Arkwright, Protection or Allendale. (Agreement and Plan of Merger, Docket Item No. 4A and Annex A to the Proxy Statement, Docket Item No. 4A at A-55; Amendment, Docket Item No. 3 and Annex A-2 to the Proxy Statement, Docket Item No. 4A at A-81.)

2. Financial Strength of the Merged Company

Arkwright asserts that the Merger will enhance the financial strength of each of the Companies and will provide the Surviving Company with the financial strength, scale, and asset and product diversification required to compete successfully in the property and casualty insurance market. (Statement of Jonathan C. Wright, dated April 29, 1999 ("Wright St."), Docket Item No. 4A, at 2; Tr. at 40, 75.) In addition, the financial strength, scale, and asset and product diversification will, in each respect, be superior to that which any of the individual companies is likely to achieve on its own. (Statement of Jeffrey A. Burchill, dated April 29, 1999 ("Burchill St."), Docket Item No. 4A, at 2; Tr. at 40.)

The decision of the Arkwright board of directors to approve the Merger was motivated in part by concerns associated with the recent financial performance of Arkwright and its ability to compete successfully in the property and casualty insurance market as a separate organization in the foreseeable future. (Wright St. at 10; Tr. at 83-84.) The key financial performance issues which influenced this decision were Arkwright's declining market share, declining premiums and high operating costs, problems inherent in managing the existing joint ownership structure of the Factory

Mutual System, and the need for greater access to capital and a broader capital base. (Wright St. at 10; Tr. at 83-84; Post-Hearing Memorandum, Docket Item No. 11, at 16.) The Arkwright board of directors concluded that the most effective way to address these performance issues was through a merger with Allendale and Protection so as to create a company of the requisite size, strength and efficiency to compete in the property and casualty insurance market for the foreseeable future. (Wright St. at 10; Tr. at 83-84.)

Arkwright's board of directors and management believe that the financial benefits to the Surviving Company as a result of the Merger will include an increased ability to retain risk and thus increase gross premiums, financial savings including a reduction in costs, enhanced financial strength necessary to access capital markets and to remain competitive, and diversification of the Companies' combined investment portfolios. (Wright St. at 12-13.) The Companies estimate that financial savings of approximately $100 million per annum over a period of several years and pre-tax operating expense savings of $67 to $92 million should be realized as a result of the Merger. (Wright St. at 13; Burchill St. at 3; Statement of Shivan S. Subramaniam, dated April 27, 1999 ("Subramaniam St."), Docket Item No. 4A, at 3; Tr. at 44, 96. See Post-Hearing Memorandum, Docket Item No. 11, at 17.)

Financial strength and claims paying ratings are important factors in establishing the competitive positions of insurance companies. Prior to the Merger Arkwright was awarded an A ("Excellent") rating by A.M. Best Company. Although the Companies have stated that they can provide no assurances in this regard, based on preliminary discussions with A.M. Best Company the Companies anticipate that the

Surviving Company will be rated A+ ("Superior"). (Proxy Statement, Docket Item No. 4A, at 14; O'Hare St. at 15; Tr. at 107.)

3. Distribution of Merger Benefits

Arkwright's board of directors and management also have asserted that the Merger will benefit the policyholders of the Surviving Company through the generation of realizable financial savings. The Companies have expressed their intention to share these savings, if any, in the form of a premium offset. (Proxy Statement, Docket No. 4A, at 19, E-1; O'Hare St. at 13; Tr. at 34.) The Surviving Company, however, is under no contractual or legal obligation to pass along financial savings attributable to the Merger realized by the Surviving Company, if any, to the members of the Surviving Company; any determination as to whether or not such savings have been realized and whether or not to distribute them in whole or in part is entirely within the discretion of the Surviving Company board. (Proxy Statement, Docket Item No. 4A, at 19.)

By the terms of the Merger Agreement, the Companies have agreed to certain principles and practices to be applied by the Surviving Company in the determination of any premium offset. This agreement is recorded in the Principles. (Annex E to the Proxy Statement, Docket Item No. 4A.) Pursuant to the Principles, any recommendation by the management of the Surviving Company with respect to the possible distribution to policyholders, in the form of a premium offset, of savings realized pursuant to the Merger, shall be fair and equitable to all policyholders without regard to which of the Companies may have previously insured the policyholder. (Proxy Statement, Docket Item 4A, at 19 and at Annex E; O'Hare St. at 13; Subramaniam St. at 4; Tr. at 34, 96; Post-Hearing Memorandum, Docket Item No. 11, at 14.)

In accordance with the Amendment (Annex A-2 to the Proxy Statement), the Working Group ensured that the Commissioner would retain jurisdiction over the Surviving Company with respect to any premium offset or any other return of merger benefits. (Amendment, Docket Item No. 3, Annex A-2 to the Proxy Statement, Docket Item No. 4A; Working Group Report, Docket Item No. 13A, at 4; Tr. at 144.) No premium offset or other return of merger benefits shall be made unless, no later than thirty days prior to the proposed date for such offset or other distribution, the plan with respect to such return of merger benefits was filed with the Commissioner. (Amendment, Docket Item No. 3; Annex A-2 to the Proxy Statement, Docket Item No. 4A.)

In making such a filing, the Surviving Company shall deliver to the Commissioner a certification of the Secretary of the Surviving Company to the effect that the factors utilized in arriving at the plan conform to the third dot point of the Principles (the "third dot point".) (Amendment, Docket Item No. 3, at 1; Annex A-2 to the Proxy Statement, Docket Item No. 4A.) These factors include: (i) the length of time that any insured has been a policyholder of any the Companies, (ii) the amount of premium paid by such policyholder during the period it has been so insured, and (iii) any other factors that may promote fair and equitable treatment of the policyholders that are otherwise consistent with the terms of the paragraph. (Proxy Statement, Docket Item No. 4A, at E-1; Amendment, Docket Item No. 3, at 4; Annex A-2 to the Proxy Statement, Docket Item No. 4A.) The Surviving Company shall also submit to the Commissioner such documentation as is reasonably required to determine the conformance of the plan with the provisions of the third dot point. (Amendment, Docket Item No. 3, Annex A-2 to the Proxy Statement, Docket Item No. 4A.)

The Commissioner shall have thirty days from the receipt of the submission to review the plan and shall have the right to disapprove the plan, but only if the Commissioner decides that the plan is not consistent with the third dot point with respect to the former Arkwright policyholders who were policyholders at the time of the merger and who are policyholders of the Surviving Company at the effective date of the plan. (Amendment, Docket Item No. 3; Annex A-2 to the Proxy Statement, Docket Item No. 4A.)

4. Continuity of Service

The Companies also assert that the Merger will provide for a continuity in corporate culture and business practices through the continuation of the Factory Mutual System. (Poutsiaka St. at 12; Tr. at 65.) If the Factory Mutual System is to continue to provide its policyholders with advances in loss prevention, management of each of the Companies believe that the Surviving Company must focus on increasing the scale of its operations to reduce overhead costs and to recoup its investments. (Poutsiaka St. at 14; Tr. at 65.) Because the Merger should eliminate significant inefficiencies in managing the combined Factory Mutual System enterprises, the engineering function of these enterprises should be able to be utilized in a more direct and coherent manner to the benefit of the policyholders of the Surviving Company. (Subramaniam St. at 4; Tr. at 97.) Moreover, the Merger will allow the Companies to effectively realize the competitive advantage afforded them by virtue of their partnership in the Factory Mutual System. Since each of the Companies' policyholder base consists primarily of Fortune 1000 companies, total financial capacity is a critical factor in the insurance selection process. (Subramaniam St. at 1; Tr. at 91.)

The Surviving Company intends to market a selected combination of insurance and financial products and services currently offered by the Factory Mutual System. All in-force insurance policies issued by Arkwright, Allendale and Protection, and their subsidiaries or affiliates, at the effective time of the Merger, will continue in force in accordance with their terms and will continue to be serviced by the Surviving Company subsequent to the Merger. (Proxy Statement, Docket Item No. 4A, at 19; Tr. at 33.)

Arkwright will be adequately represented on the Surviving Company Board, which is to consist of a total of twenty members comprising members from Arkwright, Allendale and Protection. Arkwright, Allendale and Protection each have designated six members to the Surviving Company Board. (Proxy Statement, Docket Item No. 4A, at 17; O'Hare St. at 12; Tr. at 32.) Of the six members designated by each company, two will be elected for a term of one year, two will be elected for a term of two years, and two will be elected for a term of three years. (Proxy Statement, Docket Item, No. 4A, at 26-28.) Upon completion of their initial term, the Directors of the Surviving Company Board will be subject to nomination and election in accordance with the provisions of the Charter and by-laws of the Surviving Company. (Proxy Statement, Docket Item No. 4A, at 17.)

John A. Luke, Jr., a current Director of Arkwright and one of the six members of the Surviving Company Board to be designated by Arkwright, will be Chairman of the Surviving Company Board and will serve for a term expiring at the year 2002 annual meeting of the Surviving Company. The remaining two members of the Surviving Company Board will be Shivan S. Subramaniam, the current President,

Chairman of the Board of Directors and Chief Executive Officer of Allendale, who will serve on the Surviving Company Board and as President and Chief Executive Officer of the Surviving Company, and James W. Black, the current President and Chief Executive Officer of Protection, who will serve as Vice Chairman of the Surviving Company board and as Chief Operating Officer of the Surviving Company. (Proxy Statement, Docket Item No. 4A, at 17; Agreement and Plan of Merger, Docket Item No. 4A, at Exhibit 2.5; Proxy Statement, Docket Item No. 4A, at A-68; O'Hare St. at 12.)

The remainder of the initial senior officers of the Surviving Company are set forth in Arkwright's Proxy Statement, which was mailed to policyholders of Arkwright on May 7, 1999 (Proxy Statement, Docket Item No. 4A, at 17), and it appears that all three Companies, including Arkwright, are adequately represented with respect to the composition of the Surviving Company's initial senior management team. Pursuant to the terms of the Merger Agreement, the initial senior officers will serve until the first meeting of the Surviving Company Board following the next annual meeting of the policyholders of the Surviving Company, and until their successors are duly elected and qualified. (Proxy Statement, Docket Item No. 4A, at 17.)

Arkwright adopted three Change of Control Separation Benefits Plans effective July 1, 1998, which apply to its former chief executive officer and its current senior management and operations managers (the "Arkwright Benefits Plans"). If all severance benefits under these three Arkwright Benefits Plans were to become payable in full, Arkwright estimates that the aggregate costs to Arkwright would be approximately $28,300,000. Based on discussions that Arkwright has held with its former Chief Executive Officer, and its current senior management and operations managers

concerning their future employment with the Surviving Company, Arkwright estimates that the actual amount of severance benefits it will pay under the Arkwright Benefits Plans will be approximately $10,100,000. In addition, should the severance benefits of each of the Companies, calculated on an aggregate basis, become payable in full, the Companies estimate that the total cost to the Surviving Company would be approximately $57,300,000. . Based on discussions that the Companies have held with each other concerning the chief executive officer, senior management and operations manager positions in the Surviving Company, the Companies estimate the actual aggregate amount of severance benefits that the Surviving Company will pay under the combined benefits plans of the Companies will be approximately $15,000,000. (Proxy Statement, Docket Item No. 4A, at 23-24.)

C. ECONOMIC IMPACT

In conjunction with the Merger, Allendale has committed to the Division that it will maintain certain levels of employment and charitable contributions in the Commonwealth. Allendale has provided a Commitment Letter to the Division that states that Factory Mutual Insurance Company's Massachusetts based employment complement will not be less than 238 employees at any time before the third anniversary of the effective time of the Merger, and that these employees will represent executive, professional, middle management and non-exempt positions. The Commitment Letter also states that during such three-year period the aggregate annual base salary for these positions will not be less than $10,400,000. (Commitment Letter, Docket Item No. 13A; Annex F to the Proxy Statement, Docket Item No. 4A; Working Group Report, Docket Item No. 13A, at 4; Tr. at 98, 143-44; Post-Hearing Memorandum, Docket Item No. 11, at 19.)

Allendale has also agreed, pursuant to the Commitment Letter, to maintain Arkwright's level of charitable giving for a period of at least three years following the consummation of the Merger. The Commitment Letter states that the 1998 level of charitable giving in the Commonwealth by Arkwright, Protection and Allendale and their affiliates (and their employees through matching programs arising from this employment) in the annual amount of $472,000 will be maintained by Factory Mutual Insurance Company. (Commitment Letter, Docket Item No. 13A; Annex F to the Proxy Statement, Docket Item No. 4A; Working Group Report, Docket Item No. 13A, at 4; Tr. at 143; Post-Hearing Memorandum, Docket Item No. 11, at 10.)

D. REPORT OF WORKING GROUP AND WORKING GROUP ADVISORS

The Working Group conducted an Examination of Arkwright under M.G.L. c. 175, § 4, which included extensive due diligence, review of the Merger Agreement, the Docket, and other documents and matters. (Working Group Report, Docket Item No 13A; Tr. at 134.) During the course of the Public Hearing, and by letter dated June 10, 1999, the Working Group reported to the Commissioner as follows:

> In conducting the Examination, including the review of the Merger Agreement, the Docket and other documents and matters and in performing extensive due diligence...[n]either the Working Group nor the Working Group Advisors have become aware of any fact or facts, and no other person or persons, including policyholders and members of the public, have advised the Working Group of any fact or facts, which would, when considered in the context of the proposed transaction as a whole, would tend to establish that:
>
> 1. the terms and conditions of the Merger Agreement are other than fair to Arkwright's policyholders;

2. the interests of Arkwright's policyholders are not being protected;

3. the Merger Agreement is contrary to the public interest; or

4. the Merger Agreement otherwise, and for any other reason, does not conform with the requirements of Section 19B, 211 CMR § 140, et seq. and other applicable provisions of law.

(Tr. at 139-141.) The Working Group recommended approval of the Merger Agreement. (Working Group Report, Docket Item No. 13A; Tr. at 141, 145.)

The Working Group report and recommendation was based, in part, upon certain of the views of the Working Group Advisors. In its report, Arthur Andersen stated that it did not identify any significant negative findings related to each of the Company's historical financial statements. (Arthur Andersen Due Diligence Review of Allendale Group, Arkwright Insurance Group, Protection Mutual Insurance Company (the "Arthur Andersen Report"), Docket Item No. 13A; Tr. at 125; Post-Hearing Memorandum, Docket Item No. 11, at 21.) In addition, Arthur Andersen further stated that:

1. Each of the three companies may be underreserved for asbestos and environmental type liabilities, but the underreserved amounts are not significant when compared to the size of each company and their surplus levels;

2. An income tax contingency at Arkwright exists, but Arthur Andersen believes that it may be adequately reserved for;

3. Each company has a significant amount of capital compared to premiums written and total assets. Each company's excess capital currently is rightfully owned by the policyholders who contributed, through payments of premiums over the years, to each company's surplus. The Arthur Andersen Report stated that Arthur Andersen understood that after the merger, each company's policyholders will have rights to the combined entity's surplus without reference to the company from which such policyholders originally came.

4. Cost savings resulting from the merger have been estimated by the three companies and are expected to be significant, although the specific formula to allocate future cost savings and other merger related benefits to policyholders was not made available to Arthur Andersen.

(Arthur Andersen Report, Docket Item No. 13A, at 1-2; Tr. at 125-26.) And finally, Arthur Andersen also advised the Division that it should consider the following matters, among others, in its evaluation of the Merger:

1. The Division of Insurance should consider extending Massachusetts jurisdiction over the surviving company for a period of years to protect against unfair treatment of policyholders in any demutualization, and

2. The Division of Insurance should consider requiring the surviving company to specifically define how Massachusetts policyholders will receive their portion of merger benefits, including cost savings, in order to assess fair and equitable treatment of Arkwright policyholders.

(Arthur Andersen Report, Docket Item No. 13A, at 1-2; Tr. at 126-127.) As noted above, each of these issues was addressed in the Commitment Letter. (Commitment Letter, Docket Item No. 13A; Tr. at 143-145.)

Sandler O'Neill also provided a "fairness opinion" to the Division, in which it opined that the Merger is fair, from a financial point of view, to Arkwright policyholders, taken as a group. (Sandler O'Neill Opinion Letter, Docket Item No. 13A, at 5; Tr. at 133; Post-Hearing Memorandum, Docket Item No. 11, at 21.) In arriving at this opinion, Sandler O'Neill performed extensive due diligence, which included among other things documentary review and discussions with the management of and advisors to Arkwright, Protection and Allendale. (Sandler O'Neill Opinion Letter, Docket Item No. 13A; Tr. at 132.) In evaluating the proposed transaction, Sandler O'Neill focused on the structure of the Merger and the Merger's impact on policyholders, specifically:

1. The strategic, financial and operating rationales for the proposed transaction, and

2. The possible consequences and benefits of the proposed transaction on the business, operations and financial condition of the Surviving Company.

(Tr. at 132.) The findings supporting Sandler O'Neill's fairness opinion with respect to the Merger included the following:

1. The Companies advised Sandler O'Neill that the current governance structure of the Factory Mutual Engineering Association needs to be simplified to enhance the Companies' competitive and market positions;

2. The Companies advised Sandler O'Neill that the Companies expect the Surviving Company to have enhanced underwriting retention capabilities;

3. The Companies have advised Sandler O'Neill of the expected dollar value of the potential cost savings and other synergies resulting from the Merger; and their belief that such cost savings and synergies will allow the Surviving Company to become more competitive

4. The Companies have agreed on a statement of principles concerning the sharing with the Companies' policyholders of benefits arising from the Merger in the form of premium offsets, which statement of principles provides, *inter alia*, that any allocation of post-Merger premium offsets will be made to policyholders of the Surviving Company based on a fair and equitable plan, and in a manner designed to promote policyholder retention and give due consideration to policyholder longevity and premiums paid as well as such other factors as may promote fair and equitable treatment among policyholders;

5. The Companies expect that the Merger will result in more diversified earnings and retention levels, resulting in improved financial performance relative to the Companies on a pre-Merger basis; and

6. The Companies have advised Sandler O'Neill that the proposed governance arrangements with respect to the Surviving Company reflect the Companies' determination that the Merger should be structured as a merger of equals.

(Sandler O'Neill Opinion Letter, Docket Item No. 13A, at 3.)

IV. ORDER

Based on all of the foregoing, I conclude that the proposed Merger, including the Merger Agreement, meets the requirements set forth in M.G.L. c. 175, § 19B as well as the requirements and standards of review set forth in 211 CMR § 140.00, *et seq.*

Therefore, it is hereby ORDERED that the application of Arkwright Mutual Insurance Company to merge with Protection Mutual Insurance Company and with and into Allendale Mutual Insurance Company, pursuant to the Merger Agreement is hereby APPROVED.

Date: June 29, 1999

Richard A. Cody, Esq.
Presiding Officer

Adopted:

Date: June 30, 1999

Linda L. Ruthardt
Commissioner of Insurance